

FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
APRIL 2, 2019

CALL TO ORDER <i>6:00 pm</i>	A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the South Campus Building, 40 11 th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Cal Dyck, Tobias Leichti, and Roger Noble. Rachel Ezell and Mark Mussman represented the Flathead County Planning & Zoning Office. There were 31 members of the public in attendance.
APPROVAL OF MINUTES <i>6:00 pm</i>	Klempel motioned, seconded by Netteberg, to approve the December 04, 2018 minutes as written. The motion passed unanimously by quorum.
ELECTION OF OFFICERS (CHAIR) <i>6:01 pm</i>	Netteberg motioned, seconded by Noble, to elect Dyck as chair of the Board of Adjustment. Motion was passed on a 4-0 roll call vote with Dyck abstaining.
ELECTION OF OFFICERS (VICE-CHAIR) <i>6:01 pm</i>	Klempel motioned, seconded by Netteberg, to elect Noble as vice-chair of the Board of Adjustment. Motion was passed on a roll 4-1 call vote with Noble dissenting.
PUBLIC COMMENT <i>(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A)</i> <i>6:03 pm</i>	None
DISCLOSURE OF CONFLICT OF INTERESTS <i>6:03 pm</i>	None

**J&J RANCH
(FACU-19-02)
6:04 pm**

A request from The Market Beautiful on behalf of J&J Ranch, for a conditional use permit for a 'Temporary Use' on property located at 1875 Voerman Road near Whitefish, MT within the Southeast Rural Whitefish Zoning District. The applicant is requesting a permit to allow a one-day antique and handmade market event to be held on July 6, 2019 on the subject properties. The J&J Ranch properties contain approximately 300 acres with the market to be held primarily around the center of the property. The property is zoned AG-20 (Agricultural).

**STAFF REPORT
6:04 pm**

Ezell reviewed the Staff Report FACU-19-02 for the board.

**BOARD
QUESTIONS
6:11 pm**

Klempel asked how many vendors were anticipated to participate. Staff replied they were anticipating about 45 vendors and 1,700-2,000 paying attendees. Klempel wondered how many had attended last year. Staff was unsure but said the applicants were present to answer.

Noble asked if there was a gate charge for the attendees. Staff said there was but was unsure of how much the fee was.

**APPLICANT
PRESENTATION
6:13 pm**

Vanessa Pleasants, 412 6th Ave E., was one of the applicants and promoters for The Market Beautiful which had been going for about 10 years. The event ran once in the summer and once in the winter. The event attracted locals as well as tourists to the area. Last year's event brought in about 1,700 people, not including vendors and children. She discussed details of what was planned, including having acoustic live music. She said vintage markets have struggled the last couple of years due to oversaturation but they were encouraged by feedback they received by having it at the J&J Ranch last year. They felt very blessed to be able to use the property because of their limited budget. She also expressed that she thought it was great that the owners were willing to share their beautiful property with the community. She said if they needed to find a different venue, they may discontinue the market because moving the venue would affect the numbers. She said several customers have already asked about dates and location so they could book lodging. She felt everyone could relate to being inconvenienced by their neighbors but, whether they had it here or somewhere else, somebody might be inconvenienced. She felt the event helped support the vendors make a living and the tourists helped support the community. Her hope was that some of the inconveniences could be overlooked because it would be benefitting the whole community.

Jana Roach, 129 5th Ave E, was another applicant and promoter for The Market Beautiful. She echoed what had been said previously. She said they would be

in full compliance with whatever conditions were set. Their show was the only one of its kind in the area. She wanted to assure the community that they do think about possible negative impacts and take it in to consideration prior to opening the gates. They did not want to be flippant about it.

Caleb Pleasants, 412 6th Ave E., was the spouse of Vanessa Pleasants and was involved in the planning aspect. He worked as a Sheriff's Deputy. They explained they hire the Sheriff's Posse to help assist with parking and traffic. He pointed out the property on the overhead and discussed their approach to traffic safety and control. He said the main issue was really during the opening time with the rush but after that it was a pretty steady traffic flow. He said the grass would be freshly cut as to prevent a fire hazard. He also discussed emergency vehicle access. The parking only took up a part of the allotted area and was not visible from the road. He discussed other elements they had set up to insure traffic and foot traffic safety.

**PUBLIC
COMMENT**
6:25 pm

Michael Jackson, 2555 Dillon Rd., spoke in opposition of the application. He bought his property with the knowledge of what was allowed with the 20 acre parcels. He stated it was a shame if [property owners] did not keep the integrity of the 20 acres and the zoning that went with it. He felt they all bought in with the idea that they would have a peaceful life. He felt J&J Ranch were continuing to ask for more exceptions (i.e. bands, weddings, etc.). He felt it had to stop somewhere. He was also concerned about the current traffic safety and it becoming worse.

Kristin Yandora, 1880 Voerman Rd., spoke in opposition of the application. She appreciated that they were trying to run their business but felt the bottom line was that it was a neighborhood. She said the owners of J&J Ranch were causing emotional stress and time away from her family as she has tried to research and inform neighbors [of their happenings]. She said the owners were aware of the zoning when they bought the property and now have several events that have caused negative impacts to her own property and lifestyle. She felt this application violated the general welfare standard and safety. She discussed this at great length.

Pam Reeb, 1800 E. Edgewood Dr., spoke in opposition of the application. She was concerned about the increase of traffic because, where her home was located, there had been numerous traffic accidents. She was also concerned about any large venue creating more congestion in Whitefish.

Hal Trost, 240 Sweetgrass Way, spoke in opposition of the application. He said the events did not affect him but he was concerned about where Dillon Rd. intersected with HWY 40. It was an extremely dangerous intersection that has had fatal accidents. He described the danger and his own personal experience with the intersection. He felt there needed to be a right hand or left-hand turning lane. Klempel asked if he could clarify where exactly he lived for reference. He did and said that the intersection was horrible.

Nathaniel Hall, 697 Armory Rd., spoke in opposition of the application. He said that this event may be lower impact than others, he was concerned about the continual attempts to commercialize this particular property. He echoed that they had all chosen to live out there for peace and quiet and not to live next to a place that was becoming commercialized.

Janet Vandermmmer, 1065 Creekwood Dr., spoke in opposition of the application. She asked why Market Beautiful would hold an event without a permit [referring to last year]. She also asked why their neighborhood had to be impacted because their event had lost popularity and could not afford a traditional venue. She said there were plenty of commercial venues in the valley; beautiful and wonderful venues with ample parking and safety features in place. She stated that the property in question was not a commercial venue, it was agricultural and residential.

Patty Harmon, 145 Haskill Drive., spoke in opposition of the application. She said the creek mentioned earlier was not able to be crossed by an emergency vehicle. The parking lot was farmland and would get torn up and difficult to navigate through. She used the recent skijoring event as an example. She was concerned about the emergency vehicle access, trash impact, and neighborhood impact.

Ron Bunner, 1019 Haskill Basin, spoke in opposition of the application. He had questions for the Market Beautiful applicants and also gave ideas of commercial venues available where they could host it. He wondered what the difference of the cost would be. He had lived in the area for 40 years because it was peaceful, quiet, and a good place to raise a family. He did not want to live near commercial areas.

Marlene Becker, 1025 Monegan Rd. spoke in opposition of the application. She echoed what had been shared prior.

Rich Packard, 1065 Creekwood Dr. spoke in opposition of the application. He did not have an objection to this particular event but was concerned about the location and the precedence it was setting. He wondered where it would stop. He understood Whitefish was growing and changing but he hoped that the zoning that was in place would at least protect them somewhat. He felt J&J Ranch was trying to turn it in to a commercial venue and did not see how this event would qualify as anything but a commercial venue and not compliant with the agricultural zoning.

Al Erickson, 1075 Haskill Basin Rd., spoke in opposition of the application. He was bothered by the amphitheater that faced his property and the noise amplification that occurred during large events. He could hear the skjoring event that recently took place. He was concerned about the commercialization of the property and the precedence it was setting for future venues.

**APPLICANT
REBUTTAL
6:48 pm**

Caleb Pleasant addressed some of the concerns that were brought up during public comment. He expressed that he understood a lot of the concerns. He was not going to be an advocate for the property owner but he could address some of the safety concerns regarding the event. He discussed the parking and access for emergency vehicles. He also pointed out a secondary access for emergency personnel.

He said they had also done other rural venues. The vendors could only afford what they could afford. He pointed out that the vendors were going to be in the barns and well contained. There would only be a few outside. He felt it would be pretty quiet.

He said that after events they, along with their helpers, walked the property to pick up any trash that they could find.

**BOARD
DISCUSSION
6:51 pm**

Noble questioned the director and his interpretation that this event fit in the zoning regulations. Mussman explained that any temporary building use only required an administrative use approval. When an administrative conditional use process had a number of public comments that cannot be mitigated by conditions of approval, they were brought before the board. Such was the case for this application. Mussman discussed the permitted and conditional uses allowed in the AG-20 zoning. It had been determined that the skjoring event was similar to a rodeo. He also clarified Market Beautiful was not aware that the property needed a permit for last year's event last year. The owners were notified last year that they needed one. He said there were similar events in the

valley that have applied and were granted a conditional use permit for their event (i.e. the raceway event).

Netteberg asked for clarification on whether or not the permit would be for this year only. Mussman said it was only for this year. It had conditions placed on it. If they tried to utilize the property next year, they would be required to apply next year.

Klempel brought up that alcohol was mentioned and had been brought up as a concern. Ezell said it was her understanding, having attended similar events, that liquor was not served at an 8:00 a.m. - 4:00 p.m. handmade antique market. She was aware that the applicants had been in contact with the Environmental Health Department.

Netteberg said he understood the concern of the neighbors. He understood the traffic concern. He expressed that the board had tough decisions to make because they looked at both sides and all of the ramifications. He said that people who had bought the property 100 years ago thought the same things that neighbors felt now. Things had change.

Dyck asked what permits the property currently had. Mussman went over what had been previously approved, which included a CUP for camp and retreat center and two concert venues. It did not include the owner to conduct commercial weddings at the venue.

Netteberg said people [in the area] seemed to be "hungry" for the concert venues. They liked to be outside. Glacier Twins Baseball had put on a concert last year that was hugely attended. They were going to be having another one this year because everyone wanted to see more. It was outdoors and a summer activity that could be shared.

Dyck explained that the AG-20 zones had 22 different permitted uses and 23 conditional permitted uses. What they were looking at was both sides and trying to find a balance that was equitable for both sides to make it work together. A conditional use permit could also come with specific restrictions. This application had 11 restrictions placed upon it and discussed those in detail.

Noble questioned Caleb Pleasant regarding hiring the Sheriff's Posse to help with the traffic control. Pleasant said they usually hired two or more, based on the Sheriff's Posse's recommendation. He said that they specialized in traffic

control and explained their protocol.

Noble asked if the vendors stayed the night and the response was no.

**MAIN MOTION
ON TO ADOPT
F.O.F.
(FACU-19-02)
7:06 pm**

Netteberg made a motion, seconded by Leichti, to accept Staff Report FACU-19-02 as Findings-of-Fact.

**BOARD
DISCUSSION
7:06 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
(FACU-19-02)
7:07 pm**

The motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FACU-19-02)
7:07 pm**

Noble made a motion, seconded by Netteberg, to approve the FACU-19-02 application as amended.

**BOARD
DISCUSSION
7:08 pm**

Noble had motioned to accept the application because he did not find any negative recommendations in the staff report but he also suggested adding conditions #12-14 to state the following:

- *Condition #12- The applicant shall hire the Flathead County Sheriff's Posse and follow the recommendations of the Posse to conduct traffic control during the event.*
- *Condition #13- An Emergency Access Plan should be provided to the Flathead County Planning and Zoning Office and distributed to the Whitefish Rural Fire Department and Flathead County Sherrieff's Office.*
- *Condition #14- A secondary emergency access should be made available during the event hours.*

This was discussed as a board and were in agreement with amending the approval with said conditions.

**ROLL CALL TO
APPROVE
APPLICATION AS
AMENDED
(FACU-19-02)
7:10 pm**

The motion passed unanimously on a roll call vote.

**FOREST NELSON
(FCU-19-02)
7:12 pm**

A request by Forest Nelson on behalf of Gregory and Gina Nelson, for a conditional use permit for a Recreational Facility to allow for weddings on property located at 264 El Rancho Road within the Eastside Zoning District. The property contains approximately 75 acres.

**STAFF REPORT
7:12 pm**

Mussman reviewed the Staff Report FCU-19-02 for the board.

**BOARD
QUESTIONS
7:21 pm**

Klempel asked if weddings were considered recreational facilities. Mussman read the definition of recreational facility and said wedding venues were not listed in the regulations but a wedding facility would “accommodate the enjoyment and leisure of the facility’s users”. That was how a wedding venue fit in to a recreational facility.

Liechti asked Mussman to elaborate on the necessity of the condition stating no events shall be scheduled during times of flooding. Mussman replied that nearly the entire property was located on an area that had been removed by a letter of map amendment and was located within the special flood hazard area. Leichti asked if that meant they would not be able to schedule during late spring when the risk of flooding was greater. Mussman said if there was a high-water event, any scheduled events would be cancelled.

Dyck asked for a definition on the start and stop of the summer. Mussman suggested the applicant would be a good resource for defining when the wedding season in the valley truly was.

Dyck asked if it would be sufficient to change the wording in #13 to state “structure” instead of “closed building” so that any amplified noise would have to be inside a tent. Mussman read the definition of structure as being something that was permanently attached to the ground, therefore, a tent would not be considered a structure. He gave a suggestion of it stating an enclosed facility.

Klempel asked about the bed and breakfast and wondered if that was a part of the conditional use permit. Mussman said that was a separate issue that the Environmental Health Department was addressing and was outside of this request.

Dyck asked if the property was under a conservation easement. Mussman said he would not be able to speak to that but was sure that the property owners could.

Noble asked about the previous violation with the County Health Department. Mussman said they had previously short term rented a living space in the second floor of their barn without appropriate permitting. There were also some possible discrepancies that the Environmental Health Department was looking in to with their septic system. Noble had read that the septic was illicitly connected to the drain. Mussman said that it was an issue that will be worked out.

Noble circled back to the short term rental and asked if they needed a conditional use permit (CUP) to operate that. Mussman said they did but had not applied for it at this time. If they can address their sewer issues with Environmental Health, then they will apply for a CUP permit for short term rentals. He pointed out that it was beyond the scope of this particular request. Noble stated that it was beyond the scope of this application but it established a pattern.

**APPLICANT
PRESENTATION**
7:32 pm

Gina Nelson, 264 El Rancho Rd., was the applicant. She had materials for each board member. She was going to ask that her son address the septic issue prior to her presentation.

Forest Nelson, 264 El Rancho Rd., addressed the septic system issue brought up between their short term rental and residential. He went in to great detail of the permits that had been issued and the timeline. He discussed why he felt it was really a non-issue.

Noble pointed out that they were out of compliance. Forest agreed.

Gina Nelson read some prepared comments that she had submitted to the board. She discussed the reason why they had chosen the property and gave history on

the property and expressed their desire to make an income. She discussed a poll that they had taken, which suggested her neighbors were in favor of their wedding venue. She was presented with a separate poll by neighbors that showed their opposition. She went and addressed it with her neighbors first hand. She discussed their concerns that were brought up to her and addressed them individually, including increase of traffic, dust, fire risk, noise, decreased security, possible flooding, and septic approval. She asked that they be given the opportunity to mediate the concerns.

**PUBLIC
COMMENT**
7:57 pm

Linda Kaps, 258 El Rancho Rd., spoke in opposition of the application. She provided a petition that she had initiated along with other documents for the board. She was concerned about the increase of traffic on the driveway that was right next to her house. She felt that it would have a negative impact on her property. She was also concerned that it would devalue the property. She felt that a good option would be to move the access to bypass the neighbors and pointed out how that could be done on the map. She did not want to be a complaining neighbor but it had a large impact on her property. She said the people who had signed the petition were affected by the road traffic.

Doug Dall, 322 El Ranch Rd., spoke in opposition of the application. He was concerned about having a commercial venue in the middle of the area. He was concerned about what would be allowed next. He said it was an AG zone in a flood plain and expressed that anything commercial in the middle of that would be a big mistake. He was concerned about what growth would happen next.

Jim Bailey, 268 El Rancho Rd., spoke in opposition of the application. His biggest concern was that his mother lived next to the road. He felt that dust control was a real issue that affected his property and where his elderly mother lived. He was also concerned about safety issue and possible increase of crime. He said he did not want to be put in a position to have to watch his property during every event. He expressed that he liked the Nelsons but felt there were some things that could be done to help mediate some of the concerns.

Rick Fetterhoff, 282 El Rancho Rd., spoke in opposition of the road. He was concerned about the noise and dust but his biggest concern was the emergency access. He worked with the fire department and expressed his concern that if a fire were to start in the middle of the property, there would only be one access in and out. He also expressed a need to define the definition of summer.

Sara Burdick, 298 El Rancho, was originally in opposition of the application but felt the Nelsons had addressed many of the concerns. She wanted to express that the Nelsons had strong integrity and they would work hard at making it a win-win situation.

Robert Hatlen, 258 El Rancho Rd., was in opposition of the application. He shared the same concerns as his wife that had shared earlier. His biggest concern was safety, especially traffic safety.

**APPLICANT
REBUTTAL**
8:17 pm

Gina Nelson voiced her appreciation of her neighbors that were willing to come out and voice their opinion. She said that many of the concerns could be addressed by an alternative roadway. She said they had not looked in to the option but she was open to the idea, lessening the potential impact on the neighbors.

**BOARD
DISCUSSION**
8:21 pm

Netteberg felt that it was all coming down to the dust control concern.

Noble asked Mussman what they were supposed to do because summary finding #9 stated they could not use portable chemical toilets. Mussman said they could make a successful argument with the health department (HD) that it was not permanent use. He said he was not familiar with the HD rules. If it were to be approved, they could modify the condition.

Noble asked about the use of beer, champagne, and wine and whether or not a license was needed. Mussman said it would be up to the wedding party to be responsible to hire catering that would have a license to serve alcohol. He did not believe the Nelsons would be responsible to have a liquor license. He suggested they could place a condition that would limit it to beer, wine, and champagne.

Netteberg pointed out that he had read they would limit it to two 8 oz. glasses per person. Nelson said it was in the document she had submitted. He wondered how it was going to be enforced. She said they used a sticker system or through alcohol certified wait staff, which would be hired by the bride and groom.

Noble said [the board] always tried to consider the affects on the neighbors. They had heard a lot about dust and he understood the concern. He also addressed the issue of excess noise and acknowledged that they had offered to do a decibel rating study. He wondered if they should condition that with other mitigating factors. The other thing they had heard this evening was safety with egress and ingress issues. There was only one way in and one way out and that could get backed up. He said they had a beautiful piece of property but felt like there were a few issues that needed to be revisited. He asked if a permit could be issued and then revisited in a year. He asked if that could be done and

Mussman said it was a possibility.

Klempel asked the applicants what the chances of moving the road would be. She also asked if there was a conservation easement on the property. Nelson Sr. said the road was currently over 4 miles long and would take him 10 years of weddings to create a new road. He was willing to oil the road and create a fence to help mediate some of the dust and other concerns.

Dyck asked if the conservation documentation was given to the Planning Department. Nelson said no. Dyck said that any documentation with a property should be given to the office so that they could make a proper judgement call.

Forest Nelson did not know why it was important for the county to have the conservation documents.

Dyck said that he felt that it was important for them to be able to look at it to determine there were no commercial or residential restrictions. He believed that information needed to come before the board to see if it was an agreeable thing or not. He felt that the application needed to be tabled for a month so that they could get more information on the conservation easement and clarification on the access. It had previously been mentioned that it was an agricultural access only so they felt it needed to be clarified that it was a deeded easement for either commercial or residential.

Mussman interjected that the county was not a party to the conservation easement. It was similar to private covenants in a private subdivision.

Dyck said, as a board, they did not want to step in and make an agreement without all of the information. He wanted to find out the legality of it. Mussman said the legality of it was that the county was not a party to the conservation easement. It was an agreement between the Montana Land Reliance and the Nelsons. If the parties involved had determined that the Nelsons had violated terms of the conservation easement, regardless of the permit, there would be ramifications and corrections.

Klempel asked which would take precedent.

Noble said they didn't want to grant a conditional use permit if there was a clause that said no commercial. Mussman interjected that it was not something that we could enforce, however, there could be some applicable conditions placed.

Liechti wondered if they could add a condition that would require the Nelsons give a copy of the easement and county legal could look at it if it was appropriate. Mussman said it could be added. They could also condition it to be revisited in a year. They could also condition it to run with the property owners and not the land itself. He said that if it was approved there would be with around 20 conditions. At some point in time, the property would change hands and should run with the applicant.

Dyck was concerned about health and safety. He understood they were trying to work with the Health Department but he felt that it was wise to get that addressed first and the clarification on it. He did not want to be approving something that, in a standard context, would not even be approved. He wanted to make sure that everything was taken care of and clear.

Netteberg clarified that they were not addressing the rental house. Dyck said this had to deal with the issue of a wedding venue because there was not a clear concept and they had not received a letter from the health department that they would approve. He gave suggestions as to what they could do but felt that it would be beneficial to get it all cleared up before they move forward.

Mussman said it was a valid point and could be accomplished between now and the next hearing

Dyck suggested that they give them 60 days to go through and get a clarification on a workable solution with the health department because of where it sits on the floodplain and what is required by other regulations. He also wanted clarification on the conservation easement and if it was acceptable. The third clarification he would like is coming up with a solution with the dust issue and safety and the single road access. He felt that they needed to have an alternative way and discussed options for that. He felt those were all serious issues to be addressed in 60 days.

Klempel said her biggest issue was the safety issues and the limited access. She wondered how wide the road was.

Nelsons said they could get the information to them within 30 days [the next hearing].

Mussman recapped that they would address the above mentioned things at the next meeting, giving them time to gather information to clarify. He also clarified that this agenda item would not be re-noticed and also that the public hearing portion had been closed.

**MOTION TO
TABLE
DISCUSSION
UNTIL NEXT
MEETING
(FCU-19-02)**

8:46 pm

Dyck made a motion, seconded by Klempel, to continue discussion on FCU-19-02 at the May 7, 2019 meeting to address four specific issues including:

- Environmental Health portable toilet issue
- Conservation easement
- Dust Abatement
- Emergency egress off of the property.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-19-02)**

8:46 pm

The motion passed on a 1-4 roll call vote. Noble dissented.

NEW BUSINESS

8:48 pm

None

OLD BUSINESS

8:48 pm

None

ADJOURNMENT

8:48 pm

The meeting was adjourned at approximately 8:48 pm on a motion by Dyck and seconded by Klempel. The next meeting will be held at 6:00 pm on May 7, 2019.



Cal Dyck, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 5/8/2019